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Tribes pressure Walz to clean up mining pollution

Failures to address violations at Minntac and Keetac facilities cited



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FILE PHOTO

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Marshall Helmberger

REGIONAL— Tribal nations from across Minnesota are accusing state regulators of bad faith over their continuing failure to address longstanding pollution concerns, many stemming from lax regulation of the Iron Range's taconite industry.

Despite recent legal victories, tribal officials and their environmental allies contend that the Minnesota Pollution Control Agency continues to drag its feet on enforcement of sulfate standards to protect wild rice as well as other pollution concerns. At the same time, they argue that agency officials haven't always been candid about the extent of pollution from major sources.

They cite U.S. Steel's Minntac tailings basin as a case in point. For several years, MPCA officials had argued that they had addressed pollution discharges from that tailings basin into the Sand River, by requiring the company to pump outflows from a discharge point back behind the basin's dike. The MPCA used that requirement as justification for their decision not to set sulfate discharge standards to the Sand River in a new permit the agency issued to U.S. Steel in late 2018.

Yet, MPCA officials apparently knew at least a year earlier that Minntac continued to discharge large volumes of polluted water into the Sand River, a Lake Vermilion tributary, through several uncontrolled seeps from under the basin dike.

A 2017 investigation by the federal Environmental Protection Agency documented those seeps, noted tribal officials in a letter to Gov. Tim Walz last October, which was obtained by the *Timberjay*. That letter, signed by the Minnesota Chippewa Tribe and nine of the state's tribal nations (the Bois Forte Band being the lone exception), notes that the MPCA had denied the existence of those seeps in issuing its new permit to Minntac. "Had the Fond du Lac Band (and tribal amici, including Grand Portage) not stepped up to litigate this and other problems with this permit, this falsehood would have stood unchallenged," note the tribal representatives in their letter. "What is new here is the evidence that MPCA knew it was in the wrong all along. This means its findings, and the agency's statement in the litigation on this issue, seem all to have been in bad faith."

The Minnesota Court of Appeals threw out the new Minntac permit just over one year ago citing its failure to regulate seeps, among other issues. The court also found that the permit failed to set any water quality-based effluent limits, which is a failure that environmental groups and tribes have cited frequently in mining-related permits. The state's Supreme Court heard arguments in a subsequent appeal in November but has yet to issue its decision.

Meanwhile, tribal officials are now asking Gov. Walz to direct the MPCA to undertake a joint enforcement action with the EPA to address the ongoing discharges into the Sand River. Tribal officials contend those discharges, which include high levels of sulfate, have decimated once-robust wild rice beds in the Twin Lakes, located just downstream. The EPA had proposed a joint enforcement action after documenting the seepage and pollution violations, but MPCA officials refused to take part.

Tribes are also asking the governor to direct state regulators to finalize a list of what are known as "impaired waters," to include wild rice lakes impacted by high sulfate levels.

While the MPCA did not respond to questions for this story, the agency did provide documents in response to a public records request by the *Timberjay*. In an Oct. 26, 2020 letter responding to tribes, MPCA Commissioner Laura Bishop denied that her agency opposed an EPA enforcement action, but said her agency remained "focused on completing the permit process that it believed would result in actions by USS Minntac that would improve water quality."

Part of a pattern

Minntac, it turns out, isn't the only taconite facility where tribal officials and environmentalists say MPCA actions have fallen short. While environmental groups once saw the agency's issuance of a new water discharge (known as an NPDES) permit to U.S. Steel's Keetac plant and tailings basin in 2011 as a victory, lack of enforcement of the now nearly decade-old permit has become yet another symbol of MPCA's reluctance to challenge the political clout of the mining industry.

The Keetac permit was the first in the state to set explicit water quality standards for the discharge of sulfate, to protect wild rice. Even so, the permit provided the company with years to bring its discharges within the levels set in the permit. But two deadlines, set for August 2018 and August 2019, came and went with no apparent improvement in the level of sulfate pollution, according to sampling data, obtained by the

Timberjay, that the company submitted to the MPCA under the terms of its permit. In fact, pollution concentrations appear to have increased in 2020, perhaps due to the drier conditions. Discharges in 2017, for example, averaged 54 milligrams per liter of sulfate, or well above the 14 mg/l set in the company's permit. Through October of 2020, discharges from the same outflow averaged 62 mg/l in 2020, a 15-percent increase since the new permit limits took effect.

In questions submitted to the MPCA for this story, the Timberjay asked whether MPCA officials were aware of the permit violations or if any enforcement action had been taken to address them. The MPCA did not respond.

U.S. Steel spokesperson Meghan Cox, in a brief statement, said "Keetac remains in compliance with its NPDES permit."

Others don't see it that way. "It's hard to argue that anything that advances the protection of aquatic resources has actually happened as a result of that [permit]," said Nancy Schuldt, chief water quality specialist with the Fond du Lac Band, who has been working on the sulfate issue for more than a decade. While the MPCA has argued in the past that its hands are tied by the Legislature, which enacted a law in 2016 that prohibited the agency from requiring companies to expend funds to improve sulfate pollution, that provision only applies to certain state permits. The Court of Appeals found that the Legislature lacks the authority to suspend enforcement of federal permits, such as the NPDES permit at issue with Keetac. Despite a string of recent legal victories for tribes and environmentalists on mining pollution cases, the facts on the ground remain virtually unchanged according to Paula Maccabee, legal counsel and advocacy director for Water Legacy, which has joined forces with the tribes to push for better regulation of the mining industry. Maccabee said she worries that news reports of legal victories are giving the public the impression that progress is being made in the clean-up of mining pollution in northeastern Minnesota. In fact, she says, companies like U.S. Steel continue to avoid action and evade responsibility thanks to their political influence in St. Paul.

"What is frustrating to many of our supporters is that the rules on the books do not seem to apply to the mining industry," said Maccabee. "The agencies allow them to think they're above the law."

"I cannot disagree with that," said Schuldt. "They [mining companies] invest in legal rationales for avoiding regulatory enforcement. It is their business model and it's cheaper than investing in technology that might address the problem," Schuldt added. "We have no illusions about whether the cost of clean-up would be expensive, but otherwise the public carries the cost when we eventually have to pay for another Superfund site."

U.S. Steels' Cox declined to respond to Schuldt's contention.

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